

SOUTHEAST METRO STORMWATER AUTHORITY  
acting by and through  
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 19-36  
Amendment to Private Property Policy

WHEREAS, the Private Property Policy was adopted by Resolution 08-34 to equitably address requests for services from private property owners; and

WHEREAS, the policy has been used by staff to guide response to service requests and to prioritize projects that originate from private property owners; and

WHEREAS, it is no longer necessary for a Private Property Committee to review and make recommendations for maintenance; and

WHEREAS, the policy addresses the Board's desire to fairly and equitably evaluate requests for drainage services to be performed on privately held property.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board adopts the Private Property Policy (Attachment A), as amended.
2. The Board delegates authority to the Executive Director regarding SEMSWA's response to service requests made by private property owners.
3. The Executive Director shall report to the Board on service requests made by property owners at regularly scheduled updates to the Board.

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Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson

APPROVED AS TO FORM:  
Attorney for  
Southeast Metro Stormwater Authority

By \_\_\_\_\_  
Edward J. Krisor

## Attachment A

### **SEMSWA Policy Regarding Drainage Work on Residential Private Property Including Home Owner Association (HOA) Property**

There are many HOAs located within the SEMSWA service area that own and operate drainage facilities such as detention and water quality ponds and drainage conveyance facilities. Maintenance or repair of such facilities often falls on HOAs. However, SEMSWA does maintain the right to inspect the drainage facilities. If the facilities are not properly maintained, SEMSWA will use this policy to address the maintenance need.

The intent of the policy is to provide guidance in order to:

1. Quantify and qualify the funds available for use to improve or construct drainage structures on private property;
2. Provide a rationale for the allocation of public funds to make improvements to private property when such improvements benefit the general public; and
3. Assist in the prioritization of funding any such improvement projects.

Many HOA's are requesting assistance with maintenance of or repairs to their drainage facilities. In many cases, HOA's are responsible for maintenance and repair of all drainage facilities within their respective subdivisions as noted on final plats of record. In other cases, especially with older HOA's or subdivisions without HOA representation, there is no clear indication of who is responsible for maintenance. Given these circumstances, it is necessary for the SEMSWA Board to develop a policy to determine under what conditions SEMSWA might provide maintenance and/or construction services for drainage facilities on private property. Private property generally means single family residential property and/or HOA property.

Before establishing criteria for assessing the eligibility for private entities, it may be helpful to understand the procedures for determining eligibility for SEMSWA services. It is the Board's intention that the established criteria will enable SEMSWA staff to make an initial determination concerning the appropriateness of bringing forward a maintenance or project request for work to be performed. Staff will assess the situation based on the objective criteria, and site-specific issues described herein, and then make a recommendation to the Executive Director as to the eligibility of the request for service and the priority ranking the request should be given.

The following objective criteria are to be used to determine the eligibility and ranking for privately owned property to receive maintenance and/or improvement project assistance from SEMSWA. Criteria are organized from highest to lowest priority as follows:

1. Drainage facilities that are located on private property for which there is a drainage easement that conveys stormwater flows in a major drainageway are eligible for SEMSWA services. Major Drainageways are those as defined in the Master Plan.
2. Drainage facilities on private property that are located in a major drainageway with no drainage easement are eligible for SEMSWA assistance provided that an easement is granted that is acceptable to SEMSWA.
3. Final recorded plats that designate an easement which has been conveyed to the local government for the purposes of maintaining stormwater facilities located in the easement are eligible for SEMSWA assistance.
4. Drainage facilities that are owned and operated by HOA's that receive drainage flows from public property such as streets or from other offsite sources would be eligible for some level of assistance providing that easements for such work exist or the HOA is willing to grant an easement acceptable to SEMSWA.
5. Privately owned drainage facilities, which were not designed or constructed properly, may be eligible for SEMSWA assistance to bring the facility into conformance with regulations and engineering standards
6. Privately owned detention and water quality basins and outlet facilities that discharge into major drainageways or other conveyance facilities operated and maintained by SEMSWA may be eligible for SEMSWA assistance.

Any SEMSWA activity on private property, where a public easement or right of entry does not exist, would be subject to granting SEMSWA an easement or other satisfactory form of right of entry by the property owner.

SEMSWA assistance would be limited to addressing problems related to structural features such as outlet structures for detention facilities, low flow channels, grade control structures and erosion control. The property owner would be responsible for ongoing routine maintenance such as mowing and trash pickup and for any non-drainage features such as trees and shrubs, irrigation facilities, bridges, ornamental features, etc. The property owner would continue to own the facility and be responsible for its operation.

In addition to the above objective criteria, the following site-specific issues may be considered in determining the relative importance of each request in comparison to other requests:

**A. Health and Safety Issues**

1. Is the request brought about by some hazard which poses a threat to the health and safety of the public, has caused or may cause damage to public property or, to a lesser degree, private property?
2. Would the proposed improvements create a potentially hazardous situation for either upstream or downstream property owners?

**B. System Improvement Issues**

1. What benefit does the improvement create for downstream/upstream drainage facilities and properties?
2. Does the improvement primarily enhance the overall operation of the drainage system or only the portion within the private property?
3. What is the benefit to the public if improvements are made?

**C. Owner Participation Issues**

1. Is the private property owner willing to contribute toward the cost of improvements or maintenance of the drainage facilities and at what level?
2. What is the ability of the property owner to participate in funding maintenance or project costs?
3. Does the owner have the responsibility to maintain drainage structures as indicated on the final plat, easement document, or developer's agreement?
4. What is the relative benefit that the property owner will receive from the construction of drainage improvements?

**D. Easement Issues**

1. Is the property owner willing and/or able to grant a permanent easement for SEMSWA to maintain improvements when it is in SEMSWA's best interest to do so?

It is SEMSWA's intent to encourage public/private partnerships for funding necessary for effective drainage facility improvements especially when the improvements promote flood control and improved water quality. The above criteria are meant to guide SEMSWA in funding and prioritizing the multitude of requests it receives from private property owners and, or community associations